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10

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13

14 **C.S., by and through his Conservator,  
MARY STRUBLE, on behalf of himself and  
all others similarly situated,**

16 Plaintiff,

17 v.

18 **CALIFORNIA DEPARTMENT OF  
EDUCATION, a State Agency,**

19 Defendant.

Case No. 08 CV0226 W AJB

20

21 **MOTION BY RON DIEDRICH, IN HIS  
OFFICIAL CAPACITY AS  
DIRECTOR AND CHIEF  
ADMINISTRATIVE LAW JUDGE OF  
THE STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE  
HEARINGS, TO INTERVENE AS  
DEFENDANT [No Oral Argument  
Pursuant to Local Rule]**

22

23 Judge: The Honorable Thomas J. Whelan

24 INTRODUCTION

25 Ron Diedrich, in his official capacity as Director and Chief Administrative Law Judge of the  
26 State of California Office of Administrative Hearings ("OAH") moves this Court for leave to  
intervene as a defendant in the above-captioned matter so that he may defend OAH against the  
27 allegations in the Complaint. This case is a class action complaint seeking injunctive relief  
against the California Department of Education ("CDE") for alleged violations of the federal  
28

MOTION BY RON DIEDRICH, IN HIS OFFICIAL CAPACITY AS DIRECTOR AND CHIEF ADMIN. LAW JUDGE OF THE STATE OF CALIFORNIA OFFICE OF ADMIN. HEARINGS TO INTERVENE AS DEFENDANT

Case No. 08 CV0226 W AJB

1 Individuals with Disabilities Education Act (“IDEA”), the United States Constitution Supremacy  
 2 Clause (Article VI, Section 2) and the Equal Protection Clause of the 14<sup>th</sup> Amendment. CDE is  
 3 not, however, the only, or even the primary, state agency challenged by the allegations. The crux  
 4 of the alleged violations is a contract between OAH and CDE by which OAH provides  
 5 administrative due process hearings to students with disabilities who request a hearing pursuant  
 6 to the IDEA. Plaintiff’s allegations are that OAH, in performing the administrative due process  
 7 hearings, has violated the IDEA and has harmed plaintiff and an undetermined class of additional  
 8 plaintiffs.

9 OAH has violated no state or federal laws in performing the administrative due process  
 10 hearings and seeks to intervene to protect its contractual rights with CDE and to defend itself  
 11 against the allegations specified in the complaint.<sup>1</sup>

### 13 FACTS

14 Plaintiff, C.S. by and through his Conservator, Mary Struble (“Plaintiff”) brought this action  
 15 as a class action complaint against defendant CDE. Complaint at p. 1. Plaintiff asserted  
 16 jurisdiction pursuant to 28 U.S.C. § 1331 because it arises under the IDEA and related  
 17 regulations. *Id.* at ¶¶ 1-2. The action is brought as a class action on behalf of all special  
 18 education students and their parents who had administrative due process hearings heard by OAH  
 19 between July 1, 2005 and the present (the “Class Period”) and who, plaintiff alleges, received  
 20 less than complete relief as afforded under IDEA. *Id.* at ¶¶ 3-4.

21 During the Class Period, CDE and OAH entered into and were bound by an Interagency  
 22 Agreement (“Contract”), and OAH agreed pursuant to that Contract, to conduct the due process  
 23 hearings in accordance with federal law. *See* Complaint, Exhibit 1 (“Contract”). Plaintiff alleges  
 24 that the administrative law judges conducting special education hearings for OAH failed to  
 25 obtain the training required by the Contract, failed to meet the qualifications specified in the  
 26 Contract and did not perform the hearings pursuant to applicable law. Complaint at ¶¶ 7-9, 30,

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27  
 28 1. This motion to intervene is timely as the complaint in this matter was filed on February  
     5, 2008, and served on defendant the California Department of Education on February 25, 2008.

1 34, 45-53. Additionally, plaintiff alleges that OAH has misrepresented data provided to CDE  
 2 with respect to the administration of mediations and due process hearings conducted by OAH.  
 3 *Id.* at ¶¶ 54-68. Plaintiff also alleges that administrative law judges employed by OAH violated  
 4 the Contract by presiding over non-special education cases, failing to provide proper educational  
 5 records to students and parents when requested, unlawfully delegating the decision regarding  
 6 compensatory education to the school district, allowing unauthorized discovery in the due  
 7 process proceedings and mishandling conflict of law analysis. Complaint at ¶¶ 69-95.

8 Plaintiff also alleges that defendant CDE initially did not want to award the Contract to  
 9 OAH, but did so in order not to lose federal funding. Complaint at ¶¶ 96-105.

10 Currently CDE and OAH are negotiating a contract that would be effective July 1, 2008.  
 11 Complaint at ¶¶ 3, 37 and p. 36 at ¶ 1.

12 Plaintiff seeks a temporary restraining order and preliminary and permanent injunctions  
 13 enjoining defendant CDE from renewing or otherwise awarding the Contract to OAH effective  
 14 July 1, 2008. Complaint at p. 36, ¶ 1.

15 Plaintiff served this complaint on defendant California Department of Education on  
 16 February 25, 2008. See Susan K. Leach Declaration, filed herewith, ("Leach Declaration") at ¶ 2.  
 17 Plaintiff filed a motion for a temporary restraining order on February 19, 2008 and served it on  
 18 defendant California Department of Education on February 25, 2008. Leach Declaration at ¶ 3.

19 Defendant CDE is willing to stipulate to the requested intervention. Plaintiff's counsel has  
 20 not responded to OAH's inquiry as to an agreement to the intervention, and it is presently  
 21 unknown whether plaintiff will oppose this motion. Leach Declaration at ¶¶ 5-6.

## 22 ARGUMENT

### 23 I. OAH IS AUTHORIZED TO INTERVENE IN THIS ACTION BY RIGHT 24 PURSUANT TO RULE 24(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

25 A party seeking to intervene as of right must meet four requirements: (1) the applicant  
 26 must timely move to intervene; (2) the applicant must have a significantly protectable interest  
 27 relating to the property or transaction that is the subject of the action; (3) the applicant must be  
 28 situated such that the disposition of the action may impair or impede the applicant's interest; and

1 (4) the applicant's interest must not be adequately represented by existing parties. Fed. R. Civ. P.  
 2 24(a); *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9<sup>th</sup> Cir. 2003); *Donnelly v. Glickman*, 159 F.3d  
 3 405, 409 (9th Cir. 1998). Courts liberally construe Rule 24 of the Federal Rules of Civil  
 4 Procedure in favor of applicants for intervention. *Arakaki*, 324 F.3d at 1083; *United States of*  
 5 *America v. Oregon*, 745 F.2d 550, 552 (9<sup>th</sup> Cir. 1984); *Westlands Water Dist. v. United States of*  
 6 *America*, 700 F.2d 561, 563 (9<sup>th</sup> Cir. 1983). Courts are guided primarily by practical and  
 7 equitable considerations. *Arakaki*, 324 F.3d at 1083. Here, applicant OAH meets all four  
 8 requirements, well within the guiding considerations.

9 First, this motion is timely. Courts look at three factors when determining timeliness: (1)  
 10 the stage of the proceeding; (2) the prejudice to other parties; and (3) the reason for and length of  
 11 the delay. *United States v. Oregon*, 745 F.2d 550, 552 (9<sup>th</sup> Cir. 1984) (litigation begun in 1982,  
 12 motion to intervene timely filed in September 1983). Here, the complaint was filed about four  
 13 weeks ago, and there has been no delay in filing this motion for intervention. At this stage, no  
 14 answer has been filed, and no party will be prejudiced by the intervention of OAH. In fact, to the  
 15 contrary as described below, OAH's intervention will assist in providing a full factual  
 16 presentation to the Court.

17 Second, OAH has a significantly protectable interest in this action – namely the renewal of  
 18 the Contract with CDE. An applicant has a ““significant protectable interest” in an action if (1) it  
 19 asserts an interest that is protected under some law, and (2) there is a ‘relationship’ between its  
 20 legally protected interest and the plaintiff’s claims.” *Donnelly*, 159 F.3d at 409 (internal citations  
 21 omitted). In an intervention context, “[c]ontract rights are traditionally protectable interests.”  
 22 *Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9<sup>th</sup> Cir. 2001). Moreover,  
 23 here there is a direct relationship between OAH’s protectable contract interest and plaintiff’s  
 24 claims.

25 The entire crux of plaintiff’s complaint is the alleged deficiencies of OAH in performing  
 26 pursuant to the Contract with CDE. Most of the allegations are about and against OAH and the  
 27 administrative law judges at OAH. Plaintiff alleges that OAH’s failure to obtain the training  
 28 required by the Contract, failure to meet the qualifications specified in the Contract and failure to

1 perform the hearings pursuant to applicable law caused CDE to violate the law. Complaint at ¶¶  
 2 7-9, 30, 34, 45-53. Additionally, plaintiff alleges that OAH has misrepresented data provided to  
 3 CDE with respect to the administration of mediations and due process hearings conducted by  
 4 OAH. *Id.* at ¶¶ 54-68. Plaintiff also alleges that administrative law judges employed by OAH  
 5 violated the Contract by presiding over non-special education cases, failing to provide proper  
 6 educational records to students and parents when requested, unlawfully delegating the decision  
 7 regarding compensatory education to the school district, allowing unauthorized discovery in the  
 8 due process proceedings and mishandling conflict of law analysis. Finally, plaintiff seeks  
 9 injunctive relief enjoining CDE from renewing or otherwise awarding the new Contract which  
 10 would be effective July 1, 2008 to OAH. Complaint at p. 36. All of these allegations are focused  
 11 on conduct by OAH and administrative law judges employed by OAH, and granting the relief  
 12 sought would eliminate OAH's ability to contract with CDE. There is a relationship between the  
 13 legally protected interest, OAH's right to contract with CDE, and plaintiff's claims. OAH has a  
 14 significantly protectable contractual interest at stake in this action and OAH should be allowed to  
 15 intervene.

16 Third, there can be no dispute that disposition of this action in favor of plaintiff would  
 17 impact or impede OAH's protectable contractual interest. As described above, although plaintiff  
 18 has fashioned this complaint as one against CDE, the outcome plaintiffs seek, injunctive relief  
 19 preventing defendant from renewing or otherwise awarding the Contract to OAH, would impair  
 20 OAH's rights as a party to that Contract. The resolution of this matter would affect the moving  
 21 party, OAH, in that the relief that plaintiff seeks would prevent OAH from contracting with CDE  
 22 if the relief is granted.

23 Finally, OAH's interest would not be adequately represented by the existing parties and  
 24 thus, OAH's intervention by right is required. OAH is a party to the Contract at issue. The  
 25 plaintiff has requested that the Contract not be renewed effective July 1, 2008. Although CDE is  
 26 a party to the Contract and presumably has *some* interest in maintaining its ability to contract  
 27 with OAH, plaintiff has alleged that CDE, in fact, did *not* want to contract with OAH in 2005.  
 28 See Complaint at ¶¶ 96-105. Thus, accepting plaintiff's allegation as true for the purpose of this

1 motion,<sup>2/</sup> neither plaintiff nor defendant CDE would adequately represent OAH's interest  
 2 because, according to the complaint, neither CDE nor plaintiff wants OAH to be able to contract  
 3 with CDE. Of course, even assuming plaintiff's allegation is wrong and CDE does in fact want  
 4 to maintain its ability to contract with OAH, the allegation nonetheless serves to highlight the  
 5 different interest of CDE and OAH as parties contracting for and providing services, respectively.  
 6 Therefore, OAH needs to be a party in this case to adequately represent its own interests.

7 OAH meets all the requirements for intervention by right, and this application should be  
 8 granted to allow OAH to properly defend its contractual rights with CDE, including defending its  
 9 rights by opposing the temporary restraining order motion that is pending. Plaintiffs took three  
 10 weeks to serve the complaint on defendant CDE, and the motion for temporary restraining order  
 11 was not served on CDE until February 25, 2008. There clearly is no emergency that cannot await  
 12 OAH's participation. Additionally, Courts have held that Rule 24 of the Federal Rules of Civil  
 13 Procedure should be liberally construed in favor of applicants for intervention. OAH has  
 14 violated no state or federal laws in performing the administrative due process hearings, and  
 15 allowing OAH to intervene would allow OAH to protect its contractual rights with CDE and  
 16 defend itself against the allegations specified in the complaint.

17 For all these reasons, OAH respectfully requests that the Court allow OAH to intervene in  
 18 this action.

19 **II. IN THE ALTERNATIVE, OAH SHOULD BE ALLOWED TO INTERVENE BY  
 20 PERMISSION PURSUANT TO RULE 24(b) OF THE FEDERAL RULES OF CIVIL  
 21 PROCEDURE.**

22 A party seeking to intervene by permission must show the following: (1) it shares a  
 23 common question of law or defense with the main action and (2) its motion is timely. The Court  
 24 must consider whether intervention will unduly delay the main action or will unfairly prejudice  
 25 the existing parties. Fed. R. Civ. P. 24(b); *see also Donnelly v. Glickman*, 159 F.3d at 411.

26 Here, the core of plaintiff's claims are the allegations that OAH has not performed under the

27 2. Cf. *Southwest Center for Biological Diversity*, 268 F.3d at 820 (accepting allegations and  
 28 evidence submitted in support of motion to intervene as true for purposes of intervention motion  
 when intervention must be determined before discovery).

1 Contract with CDE. CDE's defense of these claims will require the same factual information and  
2 discovery required by OAH to defend these claims. Additionally, OAH is not adding additional  
3 claims or issues to the complaint, but rather will be defending the claims already raised in the  
4 complaint. Most importantly, not only does OAH's intervention not unfairly prejudice the  
5 existing parties, but because most of the allegations regard the competency and training of  
6 administrative law judges at OAH – adding OAH as a party may quicken the pace of litigation.  
7 Fairness and judicial economy weigh heavily in favor of allowing OAH to intervene in this  
8 action.

## CONCLUSION

10 For all the reasons stated above, OAH respectfully requests that this Court allow it to  
11 intervene in this matter.

12 || Dated: March 7, 2008

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of the State of California  
  
CHRISTOPHER E. KRUEGER  
Senior Assistant Attorney General  
  
DOUGLAS J. WOODS  
Supervising Deputy Attorney General

\s\ Susan K. Leach  
SUSAN K. LEACH  
Deputy Attorney General  
Attorneys for Ron Diedrich, in his official capacity as Director  
and Chief Administrative Law Judge of the State of California  
Office of Administrative Hearings

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**DECLARATION OF SERVICE BY FACSIMILE AND OVERNIGHT MAIL**

Case Name: **C.S., by and through his Conservator, Mary Struble v. California Department of Education**

Case No.: **08 CV0226 W AJB**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business. My facsimile machine telephone number is (213) 897-1071.

On March 7, 2008 at 1:38 PM., I served the attached **MOTION BY RON DIEDRICH, IN HIS OFFICIAL CAPACITY AS DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE OF THE STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE HEARINGS, TO INTERVENE AS DEFENDANT** by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2.306. The facsimile machine I used complied with Rule 2.306, and no error was reported by the machine. Pursuant to rule 2.306(g)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration. In addition, I enclosed in a sealed envelope with the **California Overnight Courier Service**, addressed as followed:

Ellen Dowd  
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Gabriel C. Vivas, Deputy General Counsel  
Department of Education  
1430 N Street, Room 5319  
Sacramento, CA 95814  
**(916) 319-0155**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 7, 2008, at Los Angeles, California.

---

Angela Artiga  
Declarant

---

*Angela Artiga*  
Signature

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**EDMUND G. BROWN JR.**  
Attorney General

**State of California**  
**DEPARTMENT OF JUSTICE**

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**MESSAGE/INSTRUCTIONS**

Re: C.S., by and through his Conservator, Mary Struble v. California Department of Education  
 United State District Court - Southern District of California, Case No. 08CV0226 W AJB

**Motion by Ron Diedrich, in His Official Capacity as Director and Chief Administrative Law Judge of the State of California Office of Administrative Hearings' to Intervene as Defendant**

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*EDMUND G. BROWN JR.*  
Attorney General

*State of California*  
DEPARTMENT OF JUSTICE



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Re: C.S., by and through his Conservator, Mary Struble v. California Department of Education  
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Motion by Ron Diedrich, in His Official Capacity as Director and Chief Administrative Law Judge of the State of California Office of Administrative Hearings', to Intervene as Defendant